APPEAL NO. 93076

On December 16, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the respondent (claimant herein) sustained a compensable injury on (date of injury), and that she timely notified her employer, (GC), of her injury. The hearing officer ordered the appellant (carrier herein) to pay workers' compensation benefits to the claimant as and when they accrue in accordance with the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). The carrier contends that a finding and a conclusion of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly unjust, and requests that the hearing officer's decision be reversed. The claimant responds that the challenged finding and conclusion are supported by the evidence and requests that we affirm the hearing officer's decision.

DECISION

The decision of the hearing officer is affirmed.

The claimant, who is a food service coordinator for the employer, testified that on Saturday, (date of injury), she attended an employer picnic and that after the picnic she lifted boxes from her car which contained leftover food and supplies from the picnic. On Sunday the claimant had a stiff feeling in her back. She testified that her back bothered her off and on but that she was able to work Monday through Thursday of the next week.

The claimant does not claim that she injured her back at the picnic, but claims that she injured her back at work on Thursday, (date of injury). The claimant said that at about 5:30 p.m. while at work on (date of injury), she took a sack of trash out to a dumpster and that on the way back she fell on the steps leading up to the door and landed on her hands and knees. She testified that she immediately felt severe pain and went home and made an appointment to see Dr. B the next day because her pain was so bad. The claimant also said that she called work that evening and told an unidentified person in the control room that her back was hurting, that she was going to see a doctor the next day, and that she could not return to work.

The claimant said that when she saw Dr. B on May 8th, she told him that she had fallen on steps at work. Dr. B noted in a report that the claimant was seen on May 8th with a dull ache in her lower back for the past week which became worse (date of injury) after falling on stairs. He also stated that the claimant made no mention of being injured at work. Dr. B referred the claimant to Dr. G whom she saw on July 24, 1992. An MRI scan on May 25, 1992, revealed a herniated disc centrally at L5-S1 and small disc bulging at L4-L5. The claimant said she told Dr. G that she had fallen on steps at work. Dr. G reported on July 24, 1992, that the claimant developed stiffness of her back after lifting boxes at a company picnic, that this slowly got worse after a few days, and that she then developed right-sided leg pain after she fell forward. Dr. G also stated that the claimant had tried to work a few

times, but was unable to do so because of severe back and radicular right-sided leg pain. The claimant said that Dr. G performed surgery on her back on September 28, 1992. The claimant said that the doctor (she didn't indicate which doctor) told her that "the fall was what had done it."

The claimant said that on May 14, 1992 she reported to her supervisor, Mr. C, that she had fallen on the steps. She testified that she also talked to him on June 1, 1992. In a transcribed recorded statement, Mr. C said that the boxes at the picnic contained hot dogs and plastic spoons and knives and were not heavy. He also said that on June 1, 1992, the claimant told him that she injured her back when she took out trash and fell on steps at the employer's facility. He also said that the claimant was a good employee, a hard worker, and did an excellent job.

The claimant contended that her back injury occurred on (date of injury), when she fell on the steps at work. She does not claim that she injured her back at the picnic on (date of injury). The issues at the hearing were whether the claimant sustained an injury in the course and scope of her employment on (date of injury), and whether she reported the injury to her employer within 30 days of (date of injury). At the hearing, the carrier conceded that the notice issue should be answered in the affirmative. On appeal, the carrier contends that the following finding of fact and conclusion of law are against the great weight and preponderance of the evidence:

FINDING OF FACT

No. 3.The claimant injured her back on (date of injury), when she fell on a flight of steps. The claimant was furthering the affairs or business of her employer at the time of her fall.

CONCLUSION OF LAW

No. 2.The claimant proved, by a preponderance of the evidence, that she sustained an injury in the course and scope of her employment on (date of injury), and reported the injury in a timely manner as required by Article 8308-5.01(a).

The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given the evidence. Article 8308-6.34(e). The claimant is an interested witness and her testimony does no more than raise a fact issue for the hearing officer. Nevertheless, the hearing officer had a right to believe her testimony, and believing it, had a right to find that she fell on the steps of the employer's building after taking out the trash on (date of injury), and that she sustained a back injury in that fall. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-

Eastland 1980, no writ). While the claimant said that she had some back stiffness after the picnic, she said that her severe pain did not occur until she fell on the steps. She also testified that she was able to work prior to, but not after, her fall. The medical evidence showed that the claimant did have physical harm or damage to her back. Both doctors the claimant saw reported a fall in their reports, although the reports did not indicate that the claimant said she fell at work. The claimant said that she did tell her doctors that she fell at work. As the trier of fact the hearing officer resolves conflicts and inconsistencies in the evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The supervisor indicated in his statement that the claimant reported her back injury from her fall on the steps within 30 days of the date of injury as required by Article 8308-5.01(a), and the carrier conceded the notice issue at the hearing. We do not substitute our judgment for that of the hearing officer where, as in this case, the challenged finding and conclusion are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Texas Employers Insurance Association v. Alcantara, 764 S.W.2d 865 (Tex. App.-Texarkana 1989, no writ).

The decision of the hearing officer is affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge